

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Entered April 4, 1989

REVISED ORDER ESTABLISHING A PLAN FOR JURY SELECTION
FOR THE SOUTHERN DISTRICT OF TEXAS ORDER NO. 89-10

It appearing to the court that the order establishing the method for the selection of grand and petit jurors in this district adopted July 31, 1968, to comply with the Jury Selection and Service Act of 1968 (Pub. L. No. 90-274, 28 U.S.C.A. SS 1861 et sec.) should be amended pursuant to the requirements of the Judicial Conference of the United States and directives of the National Jury Committee;

And it being the policy of the United States, as enunciated by the above-named statute, (a) that all litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes; (b) that all citizens shall have the opportunity to be considered for service on grand and petit juries in the United States District Courts and shall have an obligation to serve when summoned for that purpose; and © that no citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status;

IT IS THEREFORE ORDERED:

1. This Plan shall apply and pertain to the entire Southern District of Texas, and to each of the divisions thereof. This district, as provided by 28 U.S.C.A. SS **124**, is composed of seven divisions, each being comprised of the counties as follows:

Brownsville Division--counties of Cameron and Willacy.

Corpus Christi Division--counties of Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleburg, Live Oak, Nueces and San Patricio.

Galveston Division--counties of Brazoria, Chambers, Galveston, and Matagorda.

Houston Division--counties of Austin, Brazos, Colorado,

Fayette, Fort Bend, Grimes, Harris, Madison,
Montgomery, San Jacinto, Walker, Waller, and Wharton.

Laredo Division--counties of Jim Hogg, La Salle, McMullen, Webb, and
Zapata.

McAllen Division--counties of Hidalgo and Starr.

Victoria Division--counties of Calhoun, DeWitt, Goliad, Jackson,
Lavaca, Refugio, and Victoria.

2. Management of Jury Selection Process. The Clerk of Court, or one or more of his deputies or other authorized representative as directed by the Clerk, is authorized to manage the jury selection process, acting under the supervision and control of the Chief Judge of this court. In the event of absence or disability of the Chief Judge, the judge in active service and senior in commission shall serve. The judge to whom the work of a division of this court is assigned by the Chief Judge by general order shall be in charge of the day-to-day operation of the jury selection process in that division (i.e. such judge shall, as needed, order the addition of names to the wheel, the drawing of names therefrom, the granting of temporary excuses, etc.).

3. -source of Names. It is the considered judgment of this court that voter registration lists from each county do and will furnish a fair cross section of the community of this

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district, and of each division thereof, and such voter registration lists shall be the exclusive source of names of prospective jurors to be chosen as hereinafter provided.

4. Authorization for Electronic Data Processing System.
This court finds it advantageous to use a properly programmed electronic data processing system to maintain the master jury wheel and perform other clerical services related to the jury system. Accordingly, the Clerk is authorized to make such arrangements and procure such assistance as necessary to establish an electronic data system, or a combination manual and electronic records system, to perform the duties of the Clerk as hereinafter designated in a manner to achieve

the same results as the following manual selection procedure.

Since this district will utilize the automated data processing equipment furnished by a contractor and in compliance with resolution by the Judicial Conference of the United States, a public drawing of a starting number and interval quotient will be held. At such time as the selection of jurors' names from the original source list is commenced, the Clerk shall give public notice of the date, time, and place of such drawing.

5. The Master Jury Wheel and Selection of Names Therefor. Names of prospective jurors to serve on grand and petit juries utilized after December 22, 1968, shall be selected at random, in the manner hereinafter set out, from the voter registration lists of the various counties comprising each division.

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6 . The voter registration lists referred to shall be those compiled and maintained by the County Tax Assessor-Collector of each county showing the names of those persons registered to vote in the last general election as supplemented by the inclusion of subsequent registrants to the latest practicable date.

7. Such voter registration information is supplied by the Tax Assessor-Collector of each county from voter registration lists for each precinct within such county to the Office of the Secretary of State in Austin, Texas. It is the judgment of this court that the voter registration data used to construct the Master Jury Wheel may be acquired either directly from the County Tax Assessor-Collector of each county or from the Office of the Secretary of State in Austin, Texas, provided the data acquired from either source is the most current information available and has been updated to the last practicable date.

8. Having secured such lists as to each precinct in each county, the lists for a given county shall be placed in numerical order (i.e. the list for Precinct No. 1, followed by the list for Precinct No. 2, followed by the list for

Precinct No. 3, etc.), which shall constitute the voter registration list for that county. Following the alphabetical order of the names of the counties, the lists from the several counties in a division will be assembled, and collectively will constitute the voter registration list for that division.

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Such lists for each of the divisions of this court shall be kept and maintained by the Clerk in each such division, or May be kept either jointly or severally in a duly authorized data processing center.

9. in each division the Clerk shall maintain a master jury wheel For that division, into which the names, or the identifying numbers, of those selected at random from the voter registration lists for that division shall be placed. The random selection of names to be placed in the master jury wheel shall be accomplished by the following procedure:

(a) The court will by order indicate from time to time the number of names to be placed in the master wheel. The total of all registered voters within the division (as appearing from the lists, as reflected above) will be determined. This total (of all registered voters within the division) will then be divided by the number of names required by court order, and the quotient will be the factor to be utilized as hereinafter set out (thus, by example, if by order of court 7,000 names are to be placed in the master wheel, and if the total of the voter registration lists of all of the counties comprising the division be 700,000, then the factor is the figure 100).

(b) The Clerk will, by lot or by chance, draw a number from a beginning range of consecutively numbered cards Placed in a drum or box.

The last number of the beginning range and the factor should be the same (i.e. if the factor is the figure 100 , the cards should be numbered consecutively 1 through 100). The number so drawn shall be the beginning number.

© The number of names required by court order shall then be secured by selecting the name with the beginning number; and successive names shall be secured by adding to the beginning number the factor determined as above set out, and successively thereafter (thus, by example, if the beginning number selected by chance by the Clerk be 17, and the factor 100 as suggested above, the 17th, 117th, 217th, 317th, etc., name from each county of the division list would be selected and placed in the master wheel). The Clerk will maintain a record as to the random choice of the beginning number, of the factor and the number of names are added thereto.

10. The court may order additional names to be placed in the qualified wheel from time to time as necessary.

11. On the initial refilling of the master wheel in each division, not less than one percent (1%) of the total number of names appearing on the voter registration lists for that division shall be placed in such wheel.

12. The master wheel of each division shall be emptied and refilled between November 1, 1980, and October 1, @ 1981, and shall be emptied and refilled periodically every four years thereafter.

1 3. Drawing from Master Jury Wheel. From time to time as directed by the court, the Clerk shall draw publicly and at random from the master jury wheel the names of as many persons as may be required by court order for jury service. The Clerk may, upon order of the Court, prepare an alphabetical list of the names

drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except Pursuant to this Plan and to 28 U.S.C.A. SSS1867 and 1868. The Clerk shall mail to every person whose name is drawn from the master wheel a juror qualification form (as furnished by the Administrative office of the United States Courts and as approved by the Judicial Conference of the United States), accompanied by instructions to fill out and return the form, duly signed and sworn, to the Clerk by mail within ten (10) days. If the person is unable to fill out the form, another shall do it for him and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the Clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the Clerk within ten (10) days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the Clerk forthwith to appear before the Clerk to fill out a juror qualification form.

14. Persons Exempt from Jury Service and Excuses on Individual Request.

(a) Persons Exempt.

The court finds that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with the Act; accordingly, members of such groups are barred from jury service.

(1) Members in active service in the Armed Forces of the United States.

(2) Members of the fire or police departments of any state, city, municipality, district, territory, possession, or subdivision thereof.

(3) Public Officers in the executive, legislative, or judicial branches of the government of the United States, or of any state, district, territory, possession, or subdivision thereof, who are actively engaged in the performance of official duties. ("Public officer" shall mean a person who is elected to public office.)

(b) Excuses on Individual Request.

The court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act, and shall be granted upon individual request:

(1) Persons having active care and custody of a child or children under the age of ten (10) years whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of the aged or infirm persons, and who is not employed outside of the home.

(2) Persons who have served as a grand or ,petit juror in federal court within the past two years. In this connection, in any two-Year period, no person shall be required to (I) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (ii) serve on more than one grand jury, or (iii) serve as both a grand and petit juror.

(3) Persons over seventy (70) years of age at the time of executing the juror qualification form.

(4) Members of federal law enforcement agencies (i.e., FBI agents, postal inspectors, customs agents, etc.).

(5) Members of volunteer safety organizations who work in an official capacity, without compensation, as fire fighters, members of a rescue squad or members of an ambulance crew.

15. Determination of Qualifications, Excuses, and Exemptions.

(a) The court upon its own initiative or upon recommendation of the Clerk, shall determine solely on the basis of information provided on the juror qualification form and other

competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The Clerk shall enter such determination in the space provided on the juror qualification form and on any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a **summons**, such fact shall be noted on said list.

(b) In making such determination, **the** court shall deem **any** person qualified to **serve** on **grand and** petit juries in **the district unless he:**

(1) **is** not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) **is** unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) **is** unable to speak the English language;

(4) **is** incapable, by reason of mental or physical infirmity, to render satisfactory jury service, or

(5) has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

16. Qualified Jury Wheel. The Clerk shall maintain separate qualified jury wheels for each division in the district, and shall place in such wheel the names of all persons drawn from

the master jury wheel and not disqualified, exempt, or excused

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pursuant to this Plan. He shall insure that at all times at least 300 names are contained in each such wheel. The qualified jury wheel in each division shall be refilled from the master wheel not later than October 1, 1981, and shall be periodically supplemented with the names of additional qualified persons from time to time as the need should occur during the four year life of the master jury wheel.

17. Drawing of Names From the qualified Wheel. The names of persons for service as grand or petit jurors shall be drawn by the Clerk publicly and at random from the qualified wheel at such times and in such numbers as shall be ordered by the court. While the drawing shall be public, the names so drawn shall not be disclosed to any person other than employees of the United States in the performance of their official duties, until after such jurors have been qualified and sworn in open court. The court may direct an earlier disclosure of the names drawn from the qualified jury wheel when the interests of justice require, and he shall do so when required by statute (see, e.g., 18 U.S.C.A. SS 3432).

The Clerk shall prepare a list of names of persons drawn from the qualified wheel for grand and petit juror service. He shall issue or cause to be issued summons directed to the persons so drawn by use of first-class mail. In the event of an unanticipated shortage of available petit jurors, additional names may be drawn from the qualified wheel on order of the court.

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After such jurors have been qualified and sworn in open court, the names of such grand jurors only, shall not be maintained in any public record or otherwise disclosed to any Person other than employees of the United States in the performance of their official duties, except upon written motion for good cause, and in the public interest. Such motion shall be presented to the Chief Judge or, in his absence, to the judge next senior in commission. In connection with such

disclosure, certain United States statutes, such as 18 U.S.C.A. SS 3432, require disclosure.

18. Disqualification, Exemption, Exclusion, and Excuse After Summons.
Except as hereinabove provided, no person or class of persons shall be disqualified, excluded, excused, or exempt from jury service, provided, that any person summoned for jury service may be:

(a) Excused by the Court, or by the Clerk under supervision of the Court, upon a showing of undue hardship or extreme inconvenience for such period as the court deems necessary. The names of those jurors so excused shall be subject to subsequent jury service, unless the court granting the excuse should otherwise rule at the time of the excuse.

Any person appearing pursuant to summons and then requesting to be excused for reasons that could readily have been presented prior to his appearance, shall not receive attendance or mileage fees.

I .When there is an excess of jurors present (e.g. grand jury) and their presence is required for only one day, the court shall, in its discretion, upon excusing excess jurors, inform them that they are subject to subsequent jury service.

(b) Excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would he likely to disrupt the proceedings;

© Excluded upon peremptory challenge as provided by law;

(d) Excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown;

(e) Excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations.

No person shall be excluded under clause (e), above, unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with 28 U.S.C. §§ 1861 and 1862. The number of persons excluded under clause (e), above, shall not exceed one percent of the number of persons who

return executed juror qualification forms during the period, specified in the Plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (e), above, together with detailed explanations for the exclusions, shall be forwarded immediately to the Judicial Council of the circuit, which shall have the power to make any appropriate order, prospective, or retroactive, to redress any misapplication of clause (e), but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of Title 28 of the United States Code. Any person excluded from a particular jury under clause (b), (c), or (d), above, shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

19. Utilization of Petit Jurors Among Various Courts in the Same Division.

It shall be the policy of this court to utilize the services of all qualified jurors summoned as fully and as efficiently as circumstances permit. To that end, it is contemplated that the judges of this court will coordinate their jury settings to permit the same pool of petit jurors to serve more than one court. Jurors summoned for service shall appear at the time designated in the courtroom as ordered. The names of those appearing shall be listed on separate cards. In choosing a panel to serve in a particular court for a given period of time, or for the trial of a particular case or cases, the panel* shall be chosen by shuffling or thoroughly mixing the cards of all jurors in the jury pool then available for such service; and the requisite number to compose such panel shall be taken in order from such commingled cards. On completion of such service, the jurors composing such panel may be returned to the pool for further service in the same or another court.

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20. Challenging Compliance With Selection Procedures. The procedures prescribed by 28 U.S.C.A. SS 1867 shall be the exclusive means of challenging

any jury on the ground that such jury was not selected in conformity with the provisions of Chapter 121 of Title 28 of the United States Code Annotated.

21. Maintenance of Records. After any master jury wheel is emptied and refilled as provided above, and after all persons selected to serve as jurors before such master wheel was emptied have completed their service, all papers and records compiled and maintained by the Clerk before the master wheel was emptied shall be preserved in the custody of the Clerk for four (4) years and shall be available for public inspection for the purpose of determining the validity of the selection of any jury. At the conclusion of such four-year period, such records and papers shall be destroyed.

22. This plan is based on the conclusion and judgment that the policy, purpose, and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date, as the source of an at random selection of prospective grand and petit jurors who represent a fair cross section of the community. This determination is supported by all the information this court has been able to obtain after diligent effort on its part and after full consultation with the Fifth Circuit Jury Working Committee and the Judicial Council of the Fifth Circuit. In order to assure the continuous implementation of the policy, purpose and intent of the Jury Selection and Service Act, as required by the Judicial Conference of the United States, a report will be made to the U. S. District Court, Southern District of Texas on October 1, 1981, and thereafter within six months following each periodic refilling of the master jury wheel, on forms approved by the Judicial Conference, giving general data relating to the master jury wheel, the time and manner of name selection, the source and number of names placed in the wheel and related information, an analysis of the race and sex of prospective jurors based on returns of juror qualification forms mailed to a statistically reliable sample of persons chosen at random from the master jury wheel.

23. Effective October 1, 1981, the Congress enacted a bill entitled "Federal District Court Organization Act of 1980," which amended Section 124(b)(2)

of Title 28 by taking Trinity and Polk Counties out of the Southern District of Texas and placing them in a newly created Lufkin Division of the Eastern District of Texas. Accordingly, effective October 1, 1981, the Clerk shall cause all names of prospective jurors in both the Master Jury Wheel and the Qualified Jury Wheel to be deleted from said lists.

ADOPTED at Houston, Texas this 24th day of January, 1989, by the unanimous consent of the Court.

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James DeAnda
Chief Judge